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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LSC/2016/0035**
Property	:	**2A Onslow Square, London SW7 3NP**
Applicant	:	**Ms Hana Christie**
Representative	:	**In person**
Respondent	:	**The Wellcome Trust Limited (as Trustee of the Wellcome Trust)**
Representative	:	**Ms H Holmes of Counsel instructed by CMS Cameron McKenna LLP**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge N Hawkes** **Mr S F Mason BSc FRICS FCIArb** **Mrs L Hart**
Date and venue of Hearing	:	**8th June 2016, 11th and 14th July 2016 at 10 Alfred Place, London WC1E 7LR. The inspection took place on 18th August 2016.**
Date of decision	:	**15th September 2016**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that costs in the sum of £432 are payable by the applicant pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

(2) The Tribunal determines that a deduction in the sum of £187.04 falls to be made from the gardening service charges and that the following sums are payable by the applicant:

a. building service charges in the sum of £5,231.37;

b. administration charges in the sum of £180; and

c. garden service charges in the sum of £1,059.89.

(3) The applicant's application for costs pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 is dismissed.

(4) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(5) The Tribunal does not make an order in respect of the reimbursement of the Tribunal fees paid by the applicant.

The hearing

1. The applicant appeared in person at the hearing and the respondent was represented by Ms H Holmes of Counsel.

2. The parties were unable to agree joint hearing bundles and, accordingly, separate hearing bundles were received from each party. The applicant served four copies of nineteen hearing bundles on the Tribunal and the respondent served four copies of four hearing bundles on the Tribunal. The majority of these bundles were substantial in size.

3. The hearing was originally listed for one day and, at the commencement of the hearing, the Tribunal questioned whether this time estimate would be sufficient. The respondent was concerned about the potential costs of these proceedings and wished to retain the one day listing.

4. However, the respondent's cross-examination of the applicant (which remained relevant to the points in issue) lasted for the whole of the first

day and it was ultimately agreed that the matter would be listed for hearing on 8th June 2016, 11th July 2016 and 14th July 2016, and that an inspection would take place on 18th August 2016. It was not possible to find consecutive days on which the parties, the witnesses and the Tribunal were available within a reasonable period of time following the first hearing date.

5. At the applicant's request, the evidence and submissions were carefully timed. The parties were given an identical amount of time in which to present their cases. Whilst the Tribunal was willing to sit late and did sit late, the Tribunal was of the view that it would not have been proportionate to allocate this dispute more than three days of hearing time with the inspection and deliberations to follow on a fourth day.

6. At the commencement of the hearing, the Tribunal indicated that, having given the parties three days in which to present their cases, only the documents within the twenty-three hearing bundles which were expressly referred to orally during the course of the hearing and only the issues which were expressly pursued orally during the course of the hearing would be the subject of this determination. Accordingly, it was for the applicant to identify the specific challenges to the service charge and administration charge which were being pursued and for the respondent to respond to them orally during the hearing.

7. The Tribunal heard oral evidence from the applicant and from Mr Coddington, an Associate within the Residential Asset Management Department at Knight Frank LLP ("Knight Frank"). Mr Coddington is responsible for the management of a portfolio which includes 2-16 Onslow Square, the building in which the applicant's property is situated.

8. The Tribunal did not hear oral evidence from Mr Barker, the Chairman of the Onslow Square Residents Association ("OSRA"), who prepared a witness statement dated 13th May 2016. Accordingly, his evidence could not be tested by the applicant in cross-examination and his evidence must carry less weight than it otherwise might do as a result. However, the Tribunal did not, in any event, place any significant weight on Mr Barker's evidence in determining this matter.

The application

9. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges which are payable by the applicant.

10. By the applicant's application dated 23rd January 2016, the applicant asked the Tribunal to make a determination in respect of the service charge payable for the years 2008 to 2016.

11. However, at a directions hearing on 16th February 2016 which was attended by the applicant in person and by Ms Holmes of Counsel on behalf of the respondent, the respondent referred the Tribunal Judge to an agreement dated 11th April 2014 arising from a mediation.

12. It is noted in the Directions dated 16th February 2016 that this agreement records that, amongst other things, payment by the applicant of £6,000 was accepted by the respondent *"in full and final settlement of the arrears of the Additional Service Charges currently outstanding and payable to the respondent pursuant to the terms of the lease and in full and final settlement of the garden charge due up to and including the March 2014 quarter date arrears of which are subject of Application 0111"*.

13. It is then recorded that, *"As a result of discussions Miss Christie agreed to abandon that part of her claim which related to the period up to the March 2014 quarter date. For the sake of clarification it was agreed that she would be entitled to and does seek to challenge all service charge and garden costs from 24th June 2014 to 25th December 2015 (the Period). The sums involved are £1,302.65 in respect of the garden costs for the Period and the sum of £6,449.55, having extrapolated the ground rent sums, being claimed in respect of service charges for the Period."*

14. The Tribunal Judge went on to make an order for costs against the applicant pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Tribunal Procedure Rules") with the assessment of the costs payable by the applicant to be carried out by this Tribunal.

15. The respondent confirmed at the conclusion of the hearing that the sums claimed from the applicant in these proceedings are in fact as follows:

    (i) building service charges in the sum of £5,231.37;

    (ii) administration charges being management and legal late payment fees applied on 23.1.16 in the sum of £180; and

    (iii) garden service charges in the sum of £1,246.93.

16. Accordingly, the total sum in potential dispute is £6,658.30. The applicant has confirmed in her written submissions dated 17th July

2016 that she is willing to pay £1,200 in respect of the disputed building service charges; that she is not willing to pay anything in respect of the disputed administration charges; and that she is willing to pay £224 in respect of the garden service charges.

17. The relevant legal provisions are set out in the Appendix to this decision.

The applicant's property

18. The applicant's property is situated in a stucco fronted building known as 2-16 Onslow Square which forms part of a terrace running along the south-eastern side of Onslow Square ("the building"). The front of the building appears Victorian but the rear of the building is clearly of more recent construction and work was probably undertaken to the building as part of post second world war bomb damage repairs. It is common ground that the applicant's property was originally a housekeeper's flat.

19. The applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge in accordance with the terms of the lease and, in particular, the Fifth Schedule to the lease.

20. The building service charge year runs from December to December and an interim charge is calculated and invoiced on a quarterly basis. At the end of each service charge year, the respondent may demand a balancing payment if the budget has been exceeded. The applicant's share of the total expenditure for the purposes of the Fifth Schedule to the lease is 3.232%. The gardening service charge account runs from June to June in each year.

21. The specific provisions of the lease will be referred to further below, where appropriate.

The assessment of the costs payable by the applicant pursuant to Rule 13

22. The Tribunal determines that of the sum of £1,679.28 claimed by the respondent pursuant to Rule 13 of the Tribunal Procedure Rules, costs in the sum of £432 are payable by the applicant. This sum inclusive of VAT.

Reasons for the Tribunal's decision

23. In considering this issue, the Tribunal has had regard to Willow Court Management Co & Ors v Alexander & Ors [2016] UKUT 290 (LC) and notes that the unreasonable conduct, its nature, extent and

consequences are relevant factors to be taken into account in deciding the form of the order. Unreasonable conduct is a condition of the Tribunal's power to order the payment of costs by a party, but once that condition has been satisfied, the exercise of the power is not constrained by the need to establish a causal nexus between the costs incurred and the behaviour to be sanctioned.

24. The Directions dated 16th February 2016 provide under the heading "Decision on application under rule 13":

"1. Although Miss Christie is representing herself I am satisfied that she understood the terms of the agreement reached after mediation at this Tribunal. The terms are quite clear and ... it is in full and final settlement of the period up to the March 2014 quarter date.

2. However, on demands that she produced to me from Knight Frank there are included sums which appear to relate to deficits from earlier years. It should be said that she received a letter from the respondent's solicitors just before she commenced this action which included a statement of account showing that after the payment of £6,000 there was a nil balance. None the less there was initially some confusion caused by the accounts sent out by Knight Frank after the mediation agreement had been concluded.

3. Miss Holmes said that the Respondent had been put to additional costs as a result, in the form of increased brief fees and solicitors' costs caused by including the earlier years in the application.

4. The awarding of costs under rule 13 relates to unreasonable behaviour of a party bringing, conducting or defending a case before the tribunal. The application can only relate to the bringing of the application as Miss Christie withdrew the years before the Period at the CMC before me. The costs therefore should be fairly limited. It seems to me that Miss Holmes would have attended the CMC in any event and may well have produced the helpful draft directions. Her brief fee would have been fixed based on the work required to attend the CMC which was increased as a result of Miss Christie including earlier years when she should not have done.

5. In those circumstances I find that Miss Christie has acted unreasonably in making the application in the form she did, including years which were not the subject of an agreement reached following mediation. Notwithstanding the documentation from Knight Frank she received a letter from the Respondents' solicitors setting out what was due and showing that following the payment of £6,000 there was indeed a nil balance.

6. However, her liability to costs should be limited to the increase in the brief fee to reflect the additional work and a nominal amount in respect of the solicitors' costs associated with dealing with the application and brief to counsel."

25. The Tribunal Judge then went on to give directions for the assessment of the costs. By written submissions dated 17th July 2016, the applicant seeks to argue that the decision of 16th February 2016 should be set aside.

26. However, the applicant did not seek the Tribunal Judge's permission to appeal or to set aside the decision within 28 days after the date on which the Tribunal sent the Directions dated 16th February 2016 to her. No explanation for this omission is given in her written submissions and she did not apply to the Tribunal Judge for any extension of time. Accordingly, the decision made by the Tribunal Judge on 16th February 2016 stands and the role of this Tribunal is simply to assess the costs which are payable pursuant to the order made by the previous Tribunal Judge.

27. The respondent has provided a Schedule setting out the solicitors' costs which are claimed pursuant to the order of 16th February 2016. The relevant work was carried out by a "Lawyer" at an hourly rate of £230 per hour plus VAT; by a "Trainee" at an hourly rate of £130 per hour plus VAT; and by a "Senior Associate" at the hourly rate of £300 per hour plus VAT. No issue has been raised in relation to the hourly rates. The respondent claims additional solicitors' costs resulting from the applicant's unreasonable conduct in the total sum of £1,139.68 (including VAT).

28. The Tribunal considers that the terms of the mediation agreement are clear and that the agreement can be read in approximately 5 minutes. The Tribunal accepts that some further time would have been spent considering the content of the mediation agreement; setting out the position in instructions to counsel; informing the client of the position; and in being informed that the respondent's case had been accepted after the hearing. The Tribunal also considers that it was appropriate for the Lawyer to briefly consult with the Senior Associate.

29. However, the mediation agreement is clear as to its scope and, in all the circumstances, the Tribunal does not consider that the time spent on any of these steps should have been significant. Accordingly, the Tribunal determines that it is appropriate to award the respondent solicitors' costs representing an additional half hour of the Lawyers' time and an additional 15 minutes of the Senior Associate's time. The Tribunal therefore allows the sum of £190 plus VAT (£228) in respect of the solicitors' costs.

30. As regards Counsel's fees, the issue concerning the mediation agreement should have been clearly identified in the instructions and the Tribunal determines that, in all the circumstances, it is appropriate to allow a further sum of £170 plus VAT (£204) representing 20% of Counsel's brief fee.

31. Accordingly, the Tribunal determines that the total sum payable by the applicant under this heading is £432, inclusive of VAT. The factors which have been taken into account in reaching this decision include the effect of the unreasonable conduct and also its nature, seriousness and extent. The Tribunal does not consider that the nature and seriousness of the unreasonable conduct would justify a higher award.

The inspection

32. On 18th August 2016, the Tribunal inspected the common parts of the building in which the property is situated; the ornamental gardens at Onslow Square (Onslow Square West and Onslow Square East); and the rear gardens of the terraces which make up Onslow Square. The applicant, Mr Coddington and a gardener were present during the course of the Tribunal's inspection.

33. It was necessary for the Tribunal to remind the applicant at several points during the course of the inspection that it could not accept submissions or evidence during the inspection and that it was for this reason that the respondent's legal representatives were not present. The applicant sought to give evidence during the course of the inspection to the effect that she did not have access to the rear gardens.

The general allegation that the service charges are too high

34. The applicant has produced the sales particulars for various two bedroom flats in SW5 and SW3, which give figures for the service charges payable in respect of those flats. In reliance upon these sales particulars, she submits that the service charge claimed by the respondent is outside the market norm and is "five time higher than market rates".

35. However, there is no detailed information before the Tribunal as to the nature of the services and/or works which are being provided in the case of the other flats and it is therefore not possible to compare the service charges on a like for like basis.

36. Accordingly, the Tribunal accepts the respondent's submission that the claim that the service charge is generally "too high" is not precise enough to amount to a prima facie case.

The charges relating to the Onslow Square ornamental gardens

37. The applicant submits that the charges under this heading are limited to £60 in reliance upon clause 3.4 of the lease. Clause 3.4 provides that the lessee is required (emphasis added):

"To contribute towards services repairs and maintenance in respect of the Garden

To pay to the Lessors:

(a) the sum of sixty pounds (£60) per annum ***(or such greater sum as the Lessors shall specify from time to time having regard to any increase in the costs hereinbelow referred to)*** *as a contribution towards the costs and expenses incurred from time to time by or on behalf of the Lessors in respect of the administration of and services provided in respect of the Garden and the repair maintenance and upkeep of the Garden* ***including (but without limitation)*** *the keeping of the Garden* ***in neat order and good and tidy condition*** *the tending and cultivation of the Garden the repair maintenance painting and renewal of the railings surrounding the Garden and the employment of such gardeners or other persons as the Lessors may consider necessary from time to time such sum to be paid by ...*

38. The Tribunal is satisfied that, by virtue of the words in brackets which follow "(£60) per annum", the sum payable is not limited to £60. The applicant also,argued that her lease requires her to contribute to costs associated with East and West gardens but not the rear gardens.

39. The applicant also argued that most of the items listed under the heading "Expenditure" in the garden service charge accounts are not payable under the terms of the lease and that the charges are not reasonable having regard to the standard of service which is being provided. In particular, the applicant argued that the costs of replacing plants and relaying grass are not recoverable.

40. The Tribunal accepts the respondent's submission that replanting falls within the words "tending and cultivation" and finds that the charges which make up the garden expenditure relate to the administration of and services provided in respect of the garden and to the repair, maintenance and upkeep of the garden. By virtue of the words "including (but without limitation)", the list which follows is not intended to be exhaustive.

41. The Tribunal considers that keeping the gardens in neat order and in good and tidy condition will include making changes to the planting and the layout in accordance with the changing seasons and the condition of the garden. The respondent gave an explanation, which

the Tribunal accepts, that on the facts of this case the replanting and restructuring of the garden is what is meant by landscaping.

42. The applicant asserted that the gardening costs are outside the market norm and, in support of this contention, she has produced details of charges made for the upkeep of other private gardens (which are levied by the local authority) and an alternative quotation for gardening and maintenance works from Joseph Jones dated 20th December 2012.

43. The respondent's case is that, approximately 18 months ago, the respondent instructed Knight Frank to carry out an audit of the Estate Gardens together with a third party consultant. The findings of the review were that there would be no saving through moving to an independent contractor or through managing the gardens separately (see below). The findings of the review indicated that the costs are in line with the market norm.

44. The Tribunal was informed that although the executive summary of the review which was before the Tribunal was prepared by Knight Frank, the review itself was carried out by an independent entity, Barry Holdsworth Limited.

45. The respondent argues that the Joseph Jones quotation is not comparable because it was obtained in 2012; it is not based upon the work which was being carried out during the period in dispute; and many aspects of the scope of work carried out to the gardens are excluded (for example, tree works and rubbish clearance other than garden maintenance rubbish).

46. The applicant states that she was provided with insufficient information from the respondent to enable her to obtain comparable quotations for the tree work which has been carried out. Mr Coddington gave evidence, which the Tribunal accepts, that given that the schedule of tree works to be required is agreed in the autumn it has been difficult to provide the applicant with a schedule of tree works to be carried out for a future accounting year.

47. Neither party requested an adjournment of the hearing in order to enable further evidence to be adduced. The Tribunal has to determine this case on the basis of the evidence which was before it at the hearing.

48. It was submitted by the respondent in its closing submissions that the requirement in the lease to keep the gardens in "good and tidy condition" imposes a high standard. Mr Coddington states at paragraph 6.8 of his witness statement that members of the OSRA Committee have given feedback that they consider that the gardens in and around Onslow Square are maintained "to the very highest standard". Whilst the Tribunal did not place significant weight on Mr Barker's evidence, it

notes that at paragraphs 3.15 and 3.19 of his witness statement, Mr Barker refers to the gardens being maintained to an "exceptionally high standard".

49. The applicant did not accept that the gardens were being maintained to a high standard. In fact, she did not appear to be satisfied that any of the services which were overseen or provided by Knight Frank were provided to a reasonable standard.

50. The Tribunal considers that the Joseph Jones quotation and the information relating to charges for private gardens which are collected by the local authority have some evidential value but that their weight is limited by the fact that the Joseph Jones quotation was obtained as long ago as 2012 and is not like for like and by the fact that it is not known what services are provided in respect of the other gardens. The applicant stated that she has more recent evidence from Joseph Jones but, unfortunately, the document in question was not contained in her hearing bundles.

51. The Tribunal considers that it would have been preferable for the respondent to have provided the applicant and the Tribunal with the whole of the independent review rather than simply the executive summary. However, the Tribunal also considers that a disproportionate amount of documentation has been produced in this case and that the reason for the omission is likely to be an attempt to keep the volume of documentation which is before the Tribunal and the costs of the litigation at proportionate levels. The Tribunal finds that it is likely on the balance of probabilities that the contents of the Knight Frank summary are accurate.

52. In all the circumstances, and in particular having regard to the fact that an independent review has taken place, the Tribunal finds that it is likely on the balance of probabilities that the gardening charges for the ornamental gardens fall within the reasonable range of charges for maintaining the gardens to the standard described in the lease.

53. However, on inspecting the ornamental gardens, the Tribunal was not satisfied that gardening was being carried out to a reasonable standard. The Tribunal noted numerous dead shrubs which had not been trimmed or removed or replaced; dead leaves; discarded beer bottles to one area of Onslow Square East Gardens and plant debris. It was not suggested by either party that the general standard of the gardening had altered in any way between the period under consideration and the date of the inspection. Whilst the Tribunal does not, of course, expect the gardens to be maintained to a state of perfection, having regard to the extent of the matters noted and to the wording of clause 3.4 of the lease, the Tribunal finds that deduction of 15% should be made in respect of the gardening charge.

The rear gardens

54. As regards the rear gardens of the building in which the property is situated ("the rear gardens"), by clause 1.1 of the lease, the common parts include "all... gardens ... provided by the Lessors for the common use of residents in the Building and their visitors and not subject to any lease or tenancy to which the Lessors are entitled to the reversion".

55. In cross-examination, the applicant accepted that she had access to the rear gardens of the building in which her property is situated via the back door to her flat. Further, the Tribunal observed the back door to the applicant's flat which leads to the garden during the course of its inspection.

56. It was not put to the applicant and it was not part of the respondent's case at the hearing that the applicant has access to all of the other rear gardens which the Tribunal saw during the course of its inspection. Accordingly, the Tribunal is satisfied that the rear gardens at 2-42 Onslow Square form part of the common parts and that the applicant is therefore required to contribute towards the costs associated with the rear gardens through the service charge.

57. Mr Coddington in his witness statement states that there are 11 Estate Gardens in the estate in which 2-42 Onslow Square is situated. He explains at paragraph 6.25 that:

"As well as those anticipated costs in respect of the Onslow Square Gardens, there is an additional contribution towards what we refer to as the "main pot". The main pot finances those costs relating to all of the Estate Gardens and includes expenditure such as the purchasing and maintaining machinery which is used in all of the Estate Gardens. Each of the Estate Gardens pays a share towards the main pot which is calculated by reference to acreage, namely by reference to the size of the particular Estate Garden. The Onslow Square Gardens are the largest gardens and therefore pay a higher percentage contribution towards the main pot. They also have a large number of users who contribute to the costs (currently in the region of 348 users). The acreage charged based on the size of garden is considered the fairest way to split costs benefitting all Estate Gardens."

58. Mr Coddington states that this minimises the administration costs and it is asserted in the respondent's Statement of Case (which is referred to by Mr Coddington in his witness statement) that machinery and labour costs are shared. Mr Coddington's evidence is that the applicant currently contributes £702.63 per year in respect of garden charges but if she were to contribute towards the Onslow Square Rear 2-42 gardens only in accordance with the fixed service charge percentage of 3.323% the applicant's contribution would be slightly in excess of £750 per

year. On inspecting the rear gardens, the Tribunal was satisfied that they were being maintained to a reasonable standard.

59. The Tribunal is satisfied that the applicant is only required to contribute to the costs of the rear gardens at 2-42 Onslow Square and the ornamental gardens (as noted above, it was not suggested that she has access to the other rear gardens). However, the Tribunal accepts Mr Coddington's evidence that the regime adopted has resulted in economies of scale with the result that the applicant has been charged less than the sum which would otherwise be payable, which would itself fall within a reasonable range of charges. Accordingly, the Tribunal finds that the sum claimed under this heading falls within the reasonable range of charges for the relevant costs associated with the rear gardens alone.

The facilities management fee

60. Management fees are recoverable, in principle, under clause 4.2(h) of the lease. The management fees claimed are £694.74 for the year 2014 and £702.38 for the year 2015. The management fee was set at £640 in September 2011 and it increases annually in August in accordance with the Retail Price Index, in accordance with the management agreement.

61. The applicant asserts that Knight Frank's fees are outside the reasonable range of management fees and, in support of this contention, she relies upon an alternative quotation from Urang Group ("Urang") in the sum of £300 plus VAT. Further and alternatively, she asserts that she has received a substandard service which would justify the making of a deduction from the sum demanded in respect of the facilities management fee.

62. As regards the first issue, the respondent's evidence is that the management agreement was put out to an estate wide competitive tender and consultation in 2011 and that Knight Frank was appointed as a result.

63. The respondent also submits that the Urang quotation should be treated with caution. The respondent draws the Tribunal's attention to the fact that the request was for a quotation for "a flat"; the quotation was provided on the basis that £300 plus VAT is the "standard" fee, accordingly, the character, size and condition for the building do not appear to have been taken into account; and the fee is not a final figure because there will be an additional charge for works. The respondent asserts that Knight Frank's management is of a "far higher level" to that which Urang would provide.

64. The applicant states that nowhere in the lease is it said that the respondent has the right to provide services to the highest standard. She challenges the validity of the tender on the basis that the respondent has "insisted that they have a large company so that they can reject small managing agents".

65. The Tribunal accepts the applicant's assertion that this issue is not to be approached from the starting point that the respondent has the right to provide services of the highest standard. Further, the Tribunal is not satisfied that it has been established on the evidence that the management provided by Knight Frank is of a "far higher level" than that which Urang would be able to provide.

66. However, the Tribunal is not satisfied that the competitive tender process was flawed and it considers that appropriate firms were invited to tender having regard to the nature of the building in which the property is situated. The Tribunal notes that Urang was one of the firms considered during the course of the tender and consultation process.

67. The Tribunal accepts that Knight Frank's management fees are not at the lower end of the range of reasonable management fees. However, on the basis that Knight Frank's fees were tested through the competitive tender process, the Tribunal finds that Knight Frank's management fees are within the reasonable range of management fees.

68. In support of her case that a deduction should be made from Knight Frank's management fees on account of the standard of service provided, the applicant asserted that, in 2012, Knight Frank failed to credit ground rent in the sum of £159 to her account. This was outside the period under consideration and Mr Coddington was unable to explain what had happened; accepted that there appeared to have been an error; and indicated that he would have to look into the matter.

69. When in closing a member of the Tribunal asked the applicant whether there were any more recent examples of failings on the part of Frank Knight, the applicant did not point to any further specific examples having stated that the lack of efficiency in 2012 was ongoing. At an earlier stage in the hearing, she had pointed out that Knight Frank had failed to meet one of its key performance indicators in that over four months was taken to issue accounts. However, the Tribunal notes that this is Knight Frank's self-imposed target and that there is no requirement in the lease for the accounts to be produced within four months.

70. In support of its contention that the service provided by its managing agents was of a reasonable standard, by way of example, the respondent pointed to the volume of correspondence from the applicant which Knight Frank has replied to. In response, the applicant informed the

Tribunal that she took serious objection to "being presented as someone who has problems with the landlord" and she explained that she is a busy person and that she listed some of the many things which she would prefer to do rather than correspond with Knight Frank.

71. Whilst the Tribunal does not take issue with the applicant's account that there are many other activities which she would prefer to be engaged in, the Tribunal notes that Knight Frank has received and responded to a significant volume of correspondence from the applicant. This includes correspondence in which the same query from the applicant has been repeated notwithstanding that Knight Frank has provided its response.

72. The Tribunal finds as a fact that the service provided by Knight Frank during the relevant period was of a reasonable standard and, accordingly, the Tribunal finds that the management fees claimed are reasonable and payable.

The sinking fund

73. In light of the terms of clause 4.2(o) and the Fifth Schedule to the lease, the applicant no longer pursues her initial contention that the lease does not contain a provision that would allow the respondent to demand and collect monies for a sinking fund.

74. However, the applicant challenges the reasonableness of the amount which the respondent has allowed in respect of external redecorations in reliance upon a quotation dated 14th April 2014 which she has obtained from Lethbridge Painting Limited.

75. This is not, however, a like for like quotation. The applicant informed the Tribunal that the quotation which she obtained does not include the cost of painting timberwork (which is included in the respondent's estimate) because she does not consider this work to be necessary. The Tribunal notes that the applicant did not claim to have any qualifications which would entitle her to give an expert opinion in respect of this matter.

76. In support of its contention that the sum which has been allowed in respect of external redecoration is reasonable, the respondent stated that it took advice from a qualified building surveyor who is employed by Knight Frank in a separate department.

77. The respondent's estimate of the redecoration costs is based on the actual cost of work, including redecoration work, which was carried out to the building in 2010 to which the following adjustments have been made:

a. the cost of roof works (which were required in 2010 but which should not be required as part of the work under consideration) was deducted;

b. the sum allowed in respect of preliminary costs was increased on the basis that in 2010 there were economies of scale because the work in question was being carried out to a number blocks simultaneously which will not be the case in this instance; and

c. the cost was adjusted to take account of the increase in the Tender Price Index over the relevant period.

78. The Tribunal considers that the procedure which was followed by the respondent's surveyor was appropriate and notes that estimates from contractors will be obtained when the work goes out for tender. The Tribunal is of the view that the respondent cannot be criticised for failing to obtain estimates at a point in time before the statutory consultation process and therefore before the work was due to be allocated to a contractor. The Tribunal is satisfied that, in all the circumstances, the sums which have been demanded in anticipation of the redecoration works are within a reasonable range.

79. The applicant put to Mr Coddington a general assertion that there is money missing from the sinking fund. The Tribunal accepts Mr Coddington's evidence in response that money has not gone missing but rather there was a shortfall in the leaseholders' contributions. In closing submissions, the applicant asserted that a sum of £24,000 is missing from the sinking fund. This figure was not put to Mr Coddington and it is not referred to in the applicant's witness statement. The Tribunal is not satisfied on the basis of the evidence which was adduced at the hearing that monies are missing from the sinking fund.

80. Accordingly, the Tribunal finds that the sums claimed under this heading are reasonable and payable.

The common parts

81. The Tribunal has considered clauses 1.1, 4.2 and the Fifth Schedule of the lease and is satisfied that the applicant is required to contribute towards the costs incurred by the respondent in complying with its covenant to maintain the common parts and keep them in good and substantial repair and condition.

82. Three flats in the building within which the applicant's property is situated have been retained by the respondent. The applicant contends that the respondent is seeking to recover from her, costs

relating to the upkeep of these three flats and that the respondent is recovering more than 100% of the service charge costs.

83. The Tribunal has considered the schedules produced by the respondent showing the service charge apportionment and Mr Coddington's oral evidence. The Tribunal does not consider that the schedules support the applicant's contentions and the applicant has not produced any further evidence.

84. The Tribunal accepts Mr Coddington's oral evidence and finds as a fact that the respondent is not seeking to recover from the applicant costs relating to the upkeep of these three flats which have been retained by the respondent and that the respondent is not seeking to recover more than 100% of the service charge costs.

The "vaults"

85. The applicant accepts that an area outside her property, which was referred to as "the vaults" during the course of the hearing, is not demised to her. However, she does not accept that she is obliged to contribute to the costs of maintaining "the vaults" and keeping them in good and substantial repair and condition.

86. The applicant submits that "the vaults" do not form part of the common parts, they are not provided by the lessors for the common use of residents in the building and their visitors in accordance with the definition of the common parts contained in clause 1.1 of the lease. The applicant asserts that she has a key to this area and that she can keep other residents out.

87. The respondent disputes the applicant's account and further asserts that, in any event, the vaults fall within the definition of "the Building" under clause 1.1 of the lease. "The Building" is defined as "The building or group of buildings and curtilage situate at and known as 2 to 16 Onslow Square in the Royal Borough of Kensington and Chelsea in Greater London".

88. Having inspected the property and the building, the Tribunal finds as a fact that "the vaults" form part of the curtilage of 2 to 16 Onslow Square. The Tribunal therefore determines that "the vaults" fall within the definition of the Building with the consequence that relevant costs relating to "the vaults" are recoverable by the respondent through the service charge.

The expenses in respect of which receipts have not been provided

89. The applicant argues that charges relating to expenditure for which receipts have not been provided to her are not recoverable by the respondent.

90. Mr Coddington gave evidence that suppliers to do not provide receipts for every item of expenditure. He stated that the applicant had been provided with copies of all invoices showing the expenditure incurred and all relevant accounts relating to the disputed service charges.

91. Mr Coddington stated that, insofar as Knight Frank has receipts, the applicant was allowed to look at the receipts at Knight Frank's offices and to take copies home. He explained that the reason that the applicant has not seen all of the receipts which are in existence is that she came into the office and became exasperated by the amount of time which the process was taking. She took invoices home to copy but Knight Frank was not willing to allow her to take the receipts home because they were the only copies in Knight Frank's possession.

92. Mr Coddington stated that when Knight Frank receive invoices from contractors and make payment they do not expect receipts to be issued in respect of all the work because the employees of Knight Frank are able to see from their system that the contractor has been paid.

93. Mr Coddington also gave evidence that the accounts are certified by a third party accountant who will come to the Knight Frank offices and review the accounts together with Knight Frank's in-house accountant. He stated that the third party accountant will have access to anything on the computer which they need at the time.

94. The respondent relied upon the fact that the accounts have been certified by a third party accountant; on Mr Coddington's oral evidence that the sums in question have been paid; and on the invoices which were shown to the applicant.

95. The applicant points out that the accounts have not been audited and that the accountant considered a sample of the expenditure rather than the whole of the expenditure.

96. Further, the applicant has drawn the Tribunal's attention to certain invoices which she describes as "homemade". Mr Coddington explained that these documents are internal records which are created by Knight Frank to record certain items of expenditure for which no invoice has been provided by the supplier. In oral evidence, he stated that the majority of these types of records relate to petty cash and to utility bills.

97. An issue also arose relating to the allocation of invoices and Mr Coddington gave evidence that the date on which invoices are stamped

is the date on which the invoices are authorised. He explained that the date of authorisation determines the service charge year to which the expenditure is allocated.

98. Mr Coddington's position was that all of the expenditure which forms the basis of the disputed charges was incurred. He accepts that the applicant was not provided with access to the relevant bank statements but asserts that it would not have been proportionate for the bank statements to be provided.

99. The Tribunal accepts Mr Coddington's evidence. Further, the applicant confirmed in response to a question from the Tribunal that the services in respect of which charges have been made have continued to be provided. The Tribunal considers that it is unlikely that services would continue to be provided if payment was not being made.

100. The Tribunal accepts, on the facts and circumstances of this particular case, that it would have been disproportionate for the applicant to have been provided with all of the bank statements. The Tribunal has considered the information referred to above which has been provided to the applicant by the respondent; the value of the claim; the number of items in dispute; the applicant's acceptance that the services to which the service charge relates continued to be provided; and to the volume of the documentation relied upon by the applicant at the hearing which, as stated above, runs to 19 lever arch files.

101. The Tribunal finds that it is likely on the balance of probabilities that the disputed expenditure in respect of which invoices were not provided or in respect of which what the applicant terms "homemade invoices" were provided was incurred.

Accountancy fees

102. The applicant sought to challenge the reasonableness of the accountancy fees.

103. Mr Coddington gave evidence that the respondent periodically goes out to tender for accountancy services in order to achieve the best value for money. He stated that often best value is achieved by remaining with the same accountant "because they are familiar with the history".

104. In response to a questioning regarding the absence of an invoice for the 2015 accountancy fees, Mr Coddington explained that the 2015 accounts in the bundle are draft accounts. There is no invoice to substantiate the figure for accountancy fees in these draft accounts

because the accountant was still working on the accounts when the draft was prepared and the figure is an estimate.

105. The applicant also questioned why there was reference in certain documentation to an audit. Mr Coddington accepted that the person who had posted an accountant's invoice on the Knight Frank system had used the wrong terminology in describing it as an audit fee when in fact the accounts were certified.

106. The applicant has not provided any comparable evidence in respect of the accountancy fees.

107. The Tribunal accepts Mr Coddington's evidence and finds that the accountancy fees fall within the reasonable range of accountancy fees and that they are payable.

The Housekeeper's/cleaners' costs

108. The applicant referred the Tribunal to an advertisement for a part-time housekeeper at a salary of £6,000 to £8,000 per annum. It may have appeared to the applicant that the caretaker/housekeeper was receiving a salary of £32,000 per annum. He works full time but is responsible for two blocks and the contract cleaners, in particular, provide cover when the housekeeper is on holiday. Mr Coddington explained that the figure of £32,000 is in fact made up of wages; VAT; an HR fee of around 10-15%; a minor payroll fee of £5 per month; national insurance; and, possibly, a pension contribution.

109. The housekeeper works for two blocks and his costs are split equally between the blocks. Mr Coddington stated that the housekeeper's role is not limited to cleaning and that he is also a presence in the block; a person who lessees can go to as first port of call and for the benefit of contractors. The applicant asked whether the housekeeper's costs could be split between more blocks and Mr Coddington stated that if the costs were split, the service level would drop.

110. The applicant also asserted that the cleaning of the common parts was not being carried out to a reasonable standard and that this remains the case. Having considered the evidence which was adduced at the hearing and its findings on inspecting the building, the Tribunal is not satisfied that the cleaning was not carried out to a reasonable standard.

111. The Tribunal accepts Mr Coddington's evidence and finds that the disputed charges under this heading are within a reasonable range and payable.

Balancing charges

112. The applicant submits that balancing charges which were applied to the service charge account within the relevant period, but which relate to costs incurred before the relevant period, are not recoverable by the respondent because they were compromised by the mediation agreement.

113. The mediation agreement provides that the payment of a sum of £6,000 by the applicant is "in full and final settlement of the arrears of additional service charges currently outstanding and payable to the respondent pursuant to the terms of the lease".

114. The respondent submits that because the balancing charges were not "currently outstanding" at the time of the mediation agreement they do not form part of the compromise. The Tribunal accepts this submission.

The administration charges

115. The respondent claims that two administration charges in the sum of £90 each are payable by the applicant. On the respondent's evidence, these charges relate to legal costs incurred by the respondent in referring the issues of arrears of service charge and arrears of gardening charge to their solicitors who then research the matter and may produce a letter before action.

116. The respondent asserts that such costs are recoverable under clause 3.5 of the lease (and that there need not be forfeiture on foot for costs to be recovered); that the applicant was in arrears when the charges were levied; and that it is reasonable for the respondent to charge for the costs associated with the work done to 'chase' the recovery of the unpaid sums. The respondent also points to the fact that only two charges have been levied against arrears which began to accrue in 2014.

117. The applicant argues that the chasing of arrears should be included in the management fee.

118. The Tribunal accepts the respondent's case that the disputed administration costs relate to legal costs which are not included in the management fee and finds that the disputed administration charges are reasonable and payable.

The applicant's application for costs pursuant to Rule 13

119. By her skeleton argument for the hearing of 14th July 2014 and by her written submissions dated 17th July 2016, the applicant applies for an order for costs against the respondent pursuant to Rule 13 of the Tribunal Procedure Rules. The matters which concern the applicant include the level of disclosure which has been provided by the respondent; an issue which has been explored above.

120. In considering this issue, the Tribunal has had regard to Willow Court Management Co & Ors v Alexander & Ors [2016] UKUT 290 (LC) in which it was held that an assessment of whether behaviour is unreasonable requires a value judgment on which views might differ, but the standard of behaviour expected of parties in Tribunal proceedings ought not to be set at an unrealistic level.

121. It was stated that there is no reason to depart from the guidance on the meaning of "unreasonable" in Ridehalgh v Horsefield [1994] Ch. 205. Unreasonable conduct includes conduct that is vexatious and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads to an unsuccessful outcome. The test could be expressed in different ways by asking whether a reasonable person would have conducted themselves in the manner complained of, or whether there was a reasonable explanation for the conduct complained of. Tribunals ought not to be over zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities to manage cases before they got to a full hearing.

122. Having regard to the findings which are set out above, the Tribunal does not accept the applicant's assertion that the respondent has acted unreasonably in its conduct of this litigation.

Application under s.20C and refund of fees

123. Having regard to the findings and determinations which are set out above, including the fact that the respondent has been substantially successful in defending the applicant's applications, the Tribunal does not order the respondent to refund any fees paid by the applicant and the Tribunal does not consider that it is just and equitable for an order to be made under section 20C of the 1985 Act.

Name: Judge N Hawkes **Date:** 15th September 2016

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
   (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
   (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
   (a) an amount prescribed by, or determined in accordance with, the regulations, and
   (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.